

REMARKS

Claims 13-20 are now presented for examination. Claims 13 and 22 have been amended.
No new matter has been added.

Claim 13 and 21 are independent.

On page 2 of the Office Action, The Examiner requires that Applicants acknowledge and make official the cancellation of Claims 1-12 and the renumbering of Claims 33-43 as Claims 13-23. Applicants have herein made such corrections.

On page 3 of the Office Action, Claims 13-23 are rejected under 35 U.S.C. §102(b) as being anticipated by Neilson, et al, U.S. 5,733,319. In order for a reference to anticipate a claim, the reference must disclose each and every element of the claim. Claim 13, as amended, recites in part, “a first handle portion...a second handle portion.” Neilson ‘319 fails to disclose or even suggest having a first handle portion and a second handle portion as claimed by Applicants’. Rather, Neilson ‘319 specifically discloses having a manifold (30) that is clearly of single piece construction, as shown in FIG. 2A of the reference. As Neilson ‘319 fails to disclose each and every element of Applicants’ amended Claim 13, Claim 13 is believed to have overcome the rejection under 35 U.S.C. §102(b) and is thus believed to be in condition for allowance. Moreover, Claims 12 through 20 are believed to be allowable as they depend from amended independent Claim 13.

In addition, Claim 21 recites in part, “wherein the pressure sensor is operative to terminate fluid flow upon detection of a change in pressure.” Neilson ‘319 discloses using sensor feedback for “adjustment of the temperature and flow rate” to cool tissue surrounding the

treatment site. However, Neilson '319 fails to disclose or even suggest "terminating fluid flow" altogether, and it would appear the Examiner inappropriately broadens and confuses the "adjustment of temperature and flow rate" in order to achieve a target temperature with the safety mechanism of terminating fluid flow as claimed by Applicants. As Neilson '319 fails to disclose or even remotely suggest terminating fluid flow, Neilson '319 cannot anticipate Claim 21, which is therefore believed to be in condition for allowance.

Claim 22, as amended, recites in part, "wherein the source of fluid refrigerant is pressurized and fluid in the second fluid path is in communication with a vacuum source." Neilson '319 discloses using a fluid reservoir connected to a peristaltic pump, where "pump 124 draws liquid coolant through water return line...and simultaneously pumps fluid...through water feed line," (Col. 7, Lines 35-41). The single pump of Neilson '319 provides the sole mechanism for fluid movement, and fails to disclose or even suggest having a source of fluid refrigerant that is pressurized or having the second fluid path is in communication with a vacuum source, as claimed by Applicants'. As such, Neilson '319 fails to recite each and every element of Claim 22, and Claim 22 is therefore believed to be in condition for allowance. Moreover, Claim 23 is believed to be allowable as it depends from independent Claim 21.

On page 3 of the Office Action, Claims 13-23 are rejected under 35 U.S.C. §102(e) as being anticipated by Lalonde, et al., U.S. 6,283,959. Lalonde '959 is assigned to CryoCath Technologies, Inc., of Kirkland, Quebec, Canada ("CryoCath"), the owner of the invention disclosed therein. The present application is a continuation of Application Ser. No. 10/202,991, now issued Patent No. 6,746,445, which application was a continuation of Application Ser. No. 09/556,042, now issued Patent No. 6,440,126, which application was also assigned to CryoCath,

by assignment of Assignor's Interest, as recorded with the PTO on September 11, 2000, Reel/Frame No. 011090/0368. At the time the present invention was made, the invention disclosed in the present application for patent was under an obligation of assignment to CryoCath. Therefore, the present application and Lalonde '959 are commonly owned or assigned.

The following is a quotation of 35 U.S.C. §103(c):

(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Therefore, under 35 U.S.C. §103(c), Lalonde '959 cannot be used to reject any claims of the present application under 35 U.S.C. §102(e). Accordingly, Applicants respectfully request that the rejection of Claims 13-20 be withdrawn.

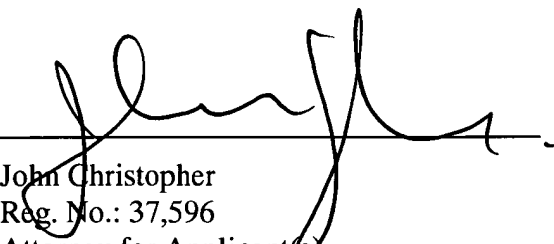
On page 5 of the Office Action, Claims 13-23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-20 of U.S. Patent No. 6,440,126. Applicants herein file a Terminal Disclaimer to obviate such rejection.

On page 5 of the Office Action, Claims 13-23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-20 of U.S. Patent No. 6,746,445. Applicants herein file a Terminal Disclaimer to obviate such rejection.

The Examiner is encouraged to telephone the undersigned to discuss any matter that would expedite allowance of the present application.

Respectfully submitted,

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